IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 550 of 2000

in

SPECIAL CIVIL APPLICATION No 10395 of 1999
with
Civil Application No.8311 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHARA SHAMJI HIRABHAI

Versus

GUJARAT STATE HANDICRAFTS & HANDLOOM DEVELOPMENT CORPO. LTD

Appearance:
MR JAYANT PATEL for Appellant
MR HS MUNSHAW for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

1. This Letters Patent Appeal is directed against the order dated 24th July, 2000 passed by the learned single Judge in Special Civil Application No.10395 of 1999. The learned single Judge has dismissed the writ petition by confirming the order of the respondent-Corporation, reducing the appellant to his original post and pay scale which he was holding prior to his transfer / appointment on the post of Store Keeper-cum-Accountant at Hyderabad.

2. The appellant herein was appointed as Accounts Clerk in the respondent-Corporation by an order dated 17th March, 1992. On 7.6.1995, the Corporation issued a Circular, by which the Corporation invited applications from the Accounts Clerks for being transferred to Hyderabad or Madras on the post of Store Keeper-cum-Accountant on the higher pay scale of Rs.1200-2040. It is an admitted fact that except the present appellant, no other Accounts Clerk showed willingness for being appointed on the aforesaid post of Store Keeper-cum-Accountant. On the basis of willingness showed by the appellant, by an order dated 27.6.1995, he was posted at Hyderabad, appointing him on the aforesaid post of Store Keeper-cum-Accountant. The appellant accepted the said posting order and resumed his duty at Hyderabad. Subsequently, he was also confirmed on the said post at Hyderabad. Therafter, on 8.5.1998, the appellant requested the Corporation to repatriate him to Gujarat in view of mental sickness of his wife. The appellant requested the Corporation that he had shown his willingness to be posted at Hyderabad as no other employee was willing to go to Hyderabad, and since his wife was not keeping good health, he may be sent back to Gujarat. Along with the said letter, he also submitted medical report in connection with the physical condition of his wife.

3. On receiving the said letter, the Assistant Manager of the Hyderabad Office of the Corporation addressed a letter to the Manager of the Corporation at Gandhinagar. In his letter, the Assistant Manager, Hyderabad also recommended for transfer of the appellant, but on the lower post and pay scale of Rs.950-1500, which

the appellant was holding when he was serving in Gujarat. The appellant, therafter, wrote a letter dated 21.7.1998 to the Manager of the Corporation at Gandhinagar, requesting him to transfer him to Rajkot. He also stated in his letter that posting him in the reduced pay scale would be in the nature of penalty, but since his wife is seriously ill, he is willing to abide by the conditions as may be imposed by the Management. However, subsequently, by another letter dated 31st July, 1998 (annexed at page 31 of the compilation), the appellant informed the Management that he is withdrawing his earlier letter dated 21st July, 1998, wherein he had shown willingness to be repatriated to Gujarat even on the lower post of Accounts Clerk and he also further pointed out in his subsequent letter that his request for re-transferring him to Rajkot may be considered without placing him in the lower pay scale of Accounts Clerk.

4. The Deputy Manager of the Corporation recorded in the Office Note that at the Bhuj Centre, there is heavy work load and looking to the quantum of work, it is necessary to have a full time Accountant at Bhuj and, there is no qualified Accountant at the Centre. It is stated in the said Office Note that effective steps were required to be taken to improve the activity of the Centre at Bhuj. A copy of the said Office Note was also sent to the Manager of the Corporation at Hyderabad. The present appellant also showed his willingness, by his letter dated 23.12.1998, to be posted at Bhuj Division, instead of Rajkot, which was his original demand. Ultimately, by an order dated 19.6.1999, the appellant was transferred from Hyderabad to Bhuj as Accountant on the same pay scale which he was holding at Hyderabad and, accordingly, he resumed his charge at Bhuj Centre.

5. After the appellant joined at Bhuj, he continued in the same higher pay scale for six months. Not only that, during that period, even one increment was also released in his favour on 27.7.1999. Thereafter, suddenly and without giving any opportunity whatsoever, the Corporation placed him in the lower pay scale of Rs.3050-4590, the scale which was meant for Accounts Clerk. The reason which was given for such downgrading was that, at the relevant time, the appellant had shown his willingness to abide by the decision of the Management in this connection. The present appellant, therefore, challenged the said action of downgrading him in the pay scale by filing the Special Civil Application.

6. The learned single Judge rejected the said Special Civil Application on the ground that the

appellant was promoted and posted at Hyderabad out of turn and accordingly, he got the benefit of promotion earlier as compared to other employees and since he requested for coming back to Gujarat, he is entitled to get the scale which he was getting before his transfer to Hyderabad and that he is not entitled to have the higher pay scale after having returned to Gujarat.

7. Mr.Jayant Patel, learned Advocate for the appellant, submitted that the earlier letter, which the appellant had a written to repatriate him to Gujarat by agreeing to accept the decision of the Management, was already withdrawn by him by subsequent letter dated 31.7.1998 and that in the impugned order, there is no reference to his subsequent letter, by which the earlier letter was withdrawn. He further submitted that his posting at Hyderabad was a substantive posting on the post of Store Keeper-cum-Accountant and that there was no restriction in the said order that he will have no right at all to comeback to Gujarat. Mr.Patel further submitted that, in any case, without giving him an opportunity of being heard, such order could not have been passed. Mr.Patel further submitted that even after his transfer to Bhuj, the Management continued to pay him higher pay scale, which he was drawing in Hyderabad, for six months and, therefore, the impugned order which is passed is absolutely arbitrary and has been passed abruptly and in flagrant violation of the principles of natural justice.

8. Mr.Munshaw, appearing for the respondent-Corporation, tried to justify the said order of the Corporation on the ground that the appellant was given out of turn promotion at Hyderabad and that he had no right to come back to Gujarat on the said promotional post and on higher pay scale. It is submitted that, by mistake, the appellant was transferred to Bhuj on the same post and the same pay scale, i.e. the pay scale of Store Keeper-cum-Accountant, and that the Management had now rectified that mistake. He submitted that since some of the employees made complaint for continuing the appellant on the higher post, the impugned decision was taken.

9. It is not in dispute that, at the relevant time, the present appellant was the only employee, who had shown his willingness to go to Hyderabad and, accordingly, he was posted at Hyderabad on the post of Store Keeper-cum-Accountant. No other employee had shown willingness to go to Hyderabad even on promotional post. The appellant worked there for about three years and

because of the circumstances narrated by him in his letter, i.e. illness of his wife, he requested the Department to transfer him to Gujarat. We are not in a position to accept the say of Mr.Munshaw that for all time to come, the appellant was required to serve only at Hyderabad and that his services were not transferable at all. It is also pertinent to note that the appellant had already withdrawn his earlier letter and, in his subsequent letter dated 31st July, 1998, he has clearly mentioned that he may be re-posted without there being reduction in the pay scale and, therafter, the transfer order was passed, transferring him to Bhuj, wherein his existing post and pay scale were protected. It was, therefore, reasonable for the appellant to presume that the Management has accepted his request to protect his pay scale and post and, accordingly, he was posted at Bhuj. It was open for the Management at that time to refuse the request of the appellant for such transfer to Bhuj, but having accepted the said request, and having transferred the appellant to Bhuj on the same pay scale and on the post which he was holding at Hyderabad, now, it is not open for the Management to downgrade him to the lower pay scale. At the time of his transfer from Hyderabad, if the Management had made it clear, perhaps the appellant would not have agreed to be transferred on the downgraded post as the same is clear from his subsequent letter. We are also not in a position to agree with the submission of Mr. Munshaw that the said order was passed under mistake because for six months, the Management had continued him in the higher pay scale and even an increment was released in his favour. Simply because some employees might have complained is no ground to downgrade the appellant and that too, without giving him any hearing whatsoever. Mr. Munshaw is also not in a position to point out any restriction for transferring the employee from one place to another. The Corporation is having Branch Offices all over India and, therefore, naturally, the Corporation can transfer employees all over India. At the relevant time, the appellant was the only person who had shown his willingness to accept the posting at Hyderabad, and at the said post, he served for more than three years and, ultimately, his request was accepted by the Management by transferring him to Bhuj. Under these circumstances, therefore, it is absolutely unjust on the part of the Management to downgrade him and to reduce his pay scale. The action is otherwise bad in law as bare minimum requirement of natural justice is not followed by the Management. We, therefore, find that the said action of the Management is absolutely arbitrary and wholly unjust and we, therefore, quash and set aside the same.

10. Considering the aforesaid facts and circumstances of the case, we set aside the impugned order of the Management downgrading the appellant from the post of Store Keeper-cum-Accountant. Management is, therefore, directed to continue the said pay scale of the appellant, which is prescribed for the post of Store Keeper-cum-Accountant, which he was getting at the time of his transfer from Hyderabad to Bhuj. We find that it was not open for the Corporation unilaterally to reduce the pay scale of the appellant as well as downgrading the appellant in such fashion.

11. In the facts and circumstances of the case, the order impugned in the Special Civil Application (Annexure `L' dated 13.12.1999) as well as the order of the learned single Judge dated 24.7.2000, passed in Special Civil Application No.10395 of 1999, are quashed and set aside. The Appeal is accordingly allowed with no order as to costs. The respondent-Corporation is directed to pay to the appellant all arrears and consequential benefits within two months from today.

In view of the above order, no order need be passed in Civil Application No.8311 of 2000.

29th March, 2001 (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

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(apj)